

**AGREEMENT FOR PURCHASE OF REAL PROPERTY  
BY AND BETWEEN THE CITY OF SAN JOSÉ AND  
JAMES P. AND JEAN M. MCCARTHY AS TRUSTEES  
OF THE JAMES AND JEAN MCCARTHY  
REVOCABLE LIVING TRUST DATED APRIL 4, 2000**

This agreement, ("Agreement"), by and between the **CITY OF SAN JOSÉ**, a municipal corporation of the State of California, ("CITY"), and **JAMES P. AND JEAN M. MCCARTHY AS TRUSTEES OF THE JAMES AND JEAN MCCARTHY REVOCABLE LIVING TRUST DATED APRIL 4, 2000** ("SELLER"), is entered into on the date of execution by CITY ("Effective Date").

**RECITALS**

- A. WHEREAS, SELLER is the owner of that certain Property located at 802 West Home Street, San José, California, which property can be further identified as Assessor's Parcel Number 264-11-012 and which is further described in **Exhibit "A"** attached hereto, together with all improvements thereto ("Property"); and
- B. WHEREAS, CITY has agreed to purchase the Property from SELLER pursuant to the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, CITY and SELLER wish to enter into this AGREEMENT for CITY's purchase of SELLER's Property.

**1. PURCHASE AND SALE.**

A. SELLER agrees to sell to CITY, and CITY agrees to purchase from SELLER the Property for the sum of ONE MILLION SIX HUNDRED SEVENTY FIVE and NO/100 DOLLARS (\$1,675,000), ("Purchase Price").

B. The purchase and sale of the Property shall be in accordance with and subject to all of the following terms of this Agreement.

**2. CONVEYANCE OF PROPERTY BY SELLER.**

SELLER agrees to convey the Property to CITY, by executing a Grant Deed, identical to that described in **Exhibit "B"** attached hereto, and delivering the same to the office of North American Title Company (Title Company), 4255 Hopyard Road, Suite 1, Pleasanton, California no later than fifteen (15) days before the "Closing Date", as such term is defined in Section 7 herein.

**3. TITLE TO BE CONVEYED.**

SELLER warrants that, except as otherwise expressly provided in **Section 13** herein, the Property shall be conveyed from SELLER to CITY, free and clear of any and all conditions, restrictions, reservations, liens, encumbrances, assessments, easements, leases (recorded or unrecorded), deeds of trust, mortgages, and any clouds or defects in title.

#### **4. TITLE INSURANCE.**

SELLER agrees to cause to be issued to CITY, at no cost to the SELLER (except as is set forth to the contrary in Section 5, below, to the contrary), concurrently with the conveyance of the Property to CITY, a C.L.T.A. owner's form policy of title insurance issued by the Title Company, with CITY named as the insured, in the amount of ONE MILLION SIX HUNDRED SEVENTY FIVE and NO/100 DOLLARS (\$1,675,000), insuring CITY's title to the Property is free and clear of any and all conditions, restrictions, liens, encumbrances, assessments, easements, leases (recorded or unrecorded), taxes and any clouds or defects in title whatsoever, except such specific exceptions as CITY expressly authorizes in **Section 13** herein, and including such endorsements as CITY may reasonably request. Acceptance by CITY of any such policy of insurance, whether such insurance complies with the requirements of this **Section 4** or not, shall not constitute a waiver by CITY of its right to such insurance as is herein required of SELLER, nor a waiver by the CITY of any rights of action for damages or any other rights which may accrue to CITY by reason of the failure of SELLER to convey title or to provide title insurance as required in this Agreement.

#### **5. COSTS AND FEES.**

CITY shall bear the cost of any transfer taxes, recording fees, title insurance, escrow fees and any other closing costs incidental to the conveying of the Property to the CITY; provided, however, that SELLER shall be responsible for and shall bear the cost of eliminating any title matters affecting the Property which have not been accepted by CITY.

#### **6. PROPERTY TAXES; RENTS AND UTILITY CHARGES.**

SELLER shall pay taxes and any penalties and costs on the Property for the current fiscal year (prorated through the date the escrow closes) and any and all previous fiscal years through escrow at close of escrow. If SELLER has previously paid taxes for the current fiscal year, the CITY shall have no responsibility to reimburse SELLER for any taxes paid by SELLER that are allocable to that part of the fiscal year that begins on the date of apportionment determined pursuant to Code Section 5082. SELLER shall be solely responsible for seeking any refund for which SELLER may be eligible under Code Section 5096.7. If the amount of any taxes or assessments is unknown at close of escrow, such taxes or assessments shall be prorated between the parties as of the date of close of escrow as soon after close of escrow as is possible.

All rents under the three leases described in **Section 13** herein ("Leases"), as well as all utility charges for the Property which are not the responsibility of the lessees under such Leases (if any), will be prorated through escrow as of the date of close of escrow. All security deposits under the Leases ("Security Deposits") herein shall be delivered by SELLER to CITY through escrow at close of escrow, except to the extent that before the close of escrow any such Security Deposit has been returned to a lessee or retained by SELLER after a lessee has vacated pursuant law and the applicable Lease.

**7. PAYMENT OF PURCHASE PRICE; CLOSE OF ESCROW.**

**A. PAYMENT FOR PROPERTY.** CITY agrees to deposit the Purchase Price with the Title Company not later than fifteen (15) days before the Closing Date, together with a counterpart copy of the Grant Deed executed by CITY.

**B. CLOSE OF ESCROW.** Close of escrow and CITY's obligations to purchase the Property and to pay the Purchase Price are conditioned upon:

- (1) Execution of Grant Deed by SELLER and delivery of same into escrow; and
- (2) Title Company's irrevocable commitment to issue the policy of title insurance complying with the requirements of **Section 4**, above; and
- (3) The continued truth and accuracy of SELLER's warranties under this Agreement; and
- (4) Delivery by SELLER into escrow, not earlier than thirty (30) days prior to the Closing Date, of: i) estoppel certificates from the tenants under the Leases, certifying the status of each Lease and the conduct of lessee's business in the form attached hereto as **Exhibit F**, with such reasonable modifications and/or additions thereto as are acceptable to CITY, and the continued truth and accuracy of such certificates for the 45 day period stated therein, and ii) an amount equal to so much of the Security Deposits as are still held by SELLER as provided in Section 6.

**C. EXTENSION OF ESCROW; TERMINATION OF AGREEMENT.** Close of escrow shall occur on a date ("Closing Date") to occur on or before the second anniversary of the Effective Date of this Agreement ("Outside Closing Date"), which Closing Date shall be selected by SELLER and communicated to CITY and Title Company in writing at least thirty (30) calendar days in advance thereof; provided, however, that in the event SELLER has not notified CITY of the Closing Date on or before the date occurring twenty two (22) months after the Effective Date, then the Closing Date shall be selected by CITY and communicated to SELLER and Title Company in writing at least thirty (30) calendar days in advance thereof. In the event close of escrow does not occur on or before the Outside Closing Date, either party to this Agreement not then in default of its obligations hereunder may thereafter terminate this Agreement by written notice to the other party.

It is understood that the extended escrow period provided above is solely for the benefit of SELLER in order to permit SELLER time to facilitate the closing of this transaction as an exchange pursuant to Internal Revenue Code Section 1031, as contemplated in **Section 18.P.** herein. Therefore, notwithstanding the first paragraph of this Section, and particularly in light of possible additional expenses to be incurred by CITY under **Section 18.Q.** herein, SELLER agrees to use best efforts to make all necessary arrangements to facilitate the closing of this transaction as an exchange pursuant to Internal Revenue Code Section 1031 as soon as is reasonably possible.

**8. POSSESSION.**

SELLER agrees to deliver to CITY, on the close of escrow, quiet and peaceful possession of the Property, subject to those Leases still existing as of the date escrow closes.

**9. WAIVERS.**

The waiver by either party of any breach of any term, condition or covenant of this Agreement by either party shall not be deemed or held to be a waiver of any subsequent or other breach of any term, condition or covenant of this Agreement.

**10. HEIRS AND ASSIGNS.**

This Agreement, and all the terms, covenants and conditions hereof, shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties hereto.

**11. LEASES AND OTHER CONTRACTS; LITIGATION.**

SELLER warrants that, except as hereinafter provided in **Section 13** herein, there are no oral or written leases or contracts on or affecting all or any portion of the Property. SELLER warrants that it has delivered to CITY complete and accurate copies of the Leases, and that such Leases are in full force and effect and there exist no defaults thereunder; provided, however that SELLER is not currently charging all rent described in the Marble Lease or Medical Lease. SELLER warrants that there is no litigation or other proceeding pending or threatened involving the Property.

**12. TAXPAYER IDENTIFICATION. (IRC 1445).**

SELLER agrees to furnish to CITY an affidavit stating under penalty of perjury SELLER's United States Taxpayer identification number, and that SELLER is not a foreign person as that term is defined for the purposes of Internal Revenue Code Section 1445, as well as a duly executed California Form 590.

**13. EXCEPTIONS.**

CITY agrees to accept title to and title insurance on the Property subject to the following exception(s), if said exception(s) affect(s) the Property: Exception(s) No(s). 1 through 12, as set forth in Title Company's Preliminary Report No. 56901-58990891, dated as of November 29, 2010, a copy of which is attached hereto as **Exhibit "C"**, together with the following leases (collectively, the "Leases"): i) lease between SELLER and American Custom Marble, Inc., dated April 1, 1999, as amended by letter dated November 20, 2006, and letter dated September 10, 2008 ("Marble Lease"), ii) lease between SELLER and San Jose Medical Management, Inc., executed September 24, 1999, as amended by letter dated April 14, 2010 ("Medical Lease"), and iii) lease between SELLER and MetroPCS California/Florida, Inc., dated July 8, 2002 ("Cell Lease").

**14. ENVIRONMENTAL COMPLIANCE; VIOLATION OF LAWS; STATUS OF CERTAIN DOCUMENTS OF RECORD.**

SELLER warrants and represents that (a) it has delivered to CITY copies of all reports of environmental investigation of the Property in SELLER's possession, and (b) except as provided in said reports, to SELLER's actual knowledge without any independent investigation or due diligence whatsoever: i) except for any of the same which may have been used, generated, manufactured, produced, stored or disposed of in connection with the business operated pursuant to the Marble Lease, neither SELLER nor any third party has used, generated, manufactured, produced, stored or disposed of on, under or about the Property any hazardous materials, as defined in **Exhibit "D"**, ("Hazardous Materials"), in violation of law, ii) the Property is not in violation of any applicable law, and iii) neither SELLER nor any other party is in default of any obligations arising under the documents referenced in Exception Nos. 5, 6, 7 or 9 of **Exhibit "C"**.

**15. AS IS.**

CITY acknowledges and agree that it will have been given a full opportunity prior to the close of escrow to inspect and investigate each and every aspect of the Property, including, without limitation, all matters relating to title and the physical condition and aspects of the Property, including, without limitation, the seismic aspects and an examination for the presence of hazardous materials; any easements and/or access rights affecting the Property; and any other matters of significance affecting the Property. CITY specifically acknowledges and agrees that it is receiving the Property on as "as is with all faults" basis and that it is not relying on any representations or warranties of any kind whatsoever, express or implied, from SELLER or its agents as to any matters concerning the Property, except as expressly set forth herein.

**16. INDEMNIFICATION BY SELLER**

SELLER hereby agrees to indemnify, defend and hold harmless CITY and its officers, employees, contractors and agents from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages and losses, as a direct or indirect result of:

- (a) Any misrepresentation or breach of warranty or breach of covenant made by SELLER in this Agreement or any document, certificate or exhibit given or delivered to CITY or escrow holder pursuant to or in connection with this Agreement; and
- (b) Third party tort claims and similar claims of the type that would typically be insured under a commercial general liability insurance policy which are based on events occurring on the Property prior to the close of escrow.

**17. NOTICES.**

Any notice which is required to be given hereunder, or which either party may desire to give to the other, shall be in writing and may be personally delivered or given

by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

To the SELLER: James and Jean McCarthy  
11300 Alba Road  
Ben Lomond, CA 95005

or to such other place as SELLER may designate by written notice.

To the CITY: City of San José  
Office of Economic Development  
Real Estate Services  
200 East Santa Clara Street, 4<sup>th</sup> floor  
San José, CA 95113  
Attn: Supervising Real Property Agent

With a Copy to: City of San Jose  
Office of the City Attorney  
200 East Santa Clara Street – 16<sup>th</sup> Floor  
San José, CA 95113  
Attn: Real Estate Attorney

or to such other place as CITY may designate by written notice.

**18. MISCELLANEOUS.**

- A. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- B. If there be more than one entity designated in or signatory to this Agreement, the obligations hereunder imposed upon SELLER shall be joint and several; and the term SELLER as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- C. This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest. Unless otherwise specified in this Agreement to the contrary, the City Manager shall have authority to give any approvals or disapprovals hereunder on behalf of CITY, including without limitation any amendments of this Agreement that do not require additional City appropriation.
- D. Time is and shall be of the essence of each term and provision of this Agreement.
- E. Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for that party's entry into this Agreement, and any breach hereof by the other party shall be deemed to

be a material breach. Each term and provision of this Agreement performable by one party shall be construed to be both a covenant and a condition.

- F. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of, the State of California.
- G. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- H. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either CITY or SELLER in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.
- I. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.
- J. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.
- K. All warranties and indemnities of SELLER (including, without limitation, those set forth in Sections 3, 11, 14, 16 and 18.R.) shall survive the close of escrow and recordation of the Grant Deed.
- L. Effective as of the close of escrow, SELLER hereby assigns to CITY all of SELLER's rights, title and interest in those of the Leases still in effect as of the date escrow closes, and CITY assumes SELLER's obligations under such Leases arising from and after the close of escrow.
- M. Days, unless otherwise specified, shall mean calendar days.
- N. Each of the parties agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to the close of escrow, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement; such actions shall include executing escrow instructions with Title Company which are consistent with the terms of this Agreement.
- O. This Agreement shall not be recorded. Concurrently with their execution of this Agreement, SELLER and CITY shall execute a memorandum hereof substantially in the form of Exhibit E attached hereto and incorporated herein by

this reference (the "Memorandum"), which shall be recorded by CITY in the Official Records of Santa Clara County, for the purpose of providing constructive notice of the rights and obligations of the parties pursuant to this Agreement.

- P. CITY agrees upon the request of SELLER to cooperate with SELLER in closing all or part of this transaction as an exchange pursuant to Internal Revenue Code Section 1031, provided that: 1) CITY shall incur no additional expenses or liability in connection therewith and shall not be required to hold title to any property other than the Property, 2) SELLER shall indemnify, defend and hold harmless CITY and its officers, employees, contractors and agents from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages and losses, as a direct or indirect result of CITY's compliance with this Section, and 3) the failure of SELLER to make necessary arrangements for such an exchange prior to the Outside Closing Date shall not otherwise affect the parties' rights or obligations under this Agreement, including without limitation SELLER's obligation to proceed to close of escrow.
- Q. Between SELLER's execution of this Agreement and close of escrow, SELLER shall: i) maintain the Property in a safe condition, in light of CITY's intention to demolish the building after close of escrow, ii) not enter into any new leases affecting the Property, iii) not enter into any other contracts affecting the Property unless such contracts can be completed or terminated prior to close of escrow, and iv) not, without the prior written consent of CITY, amend any of the Leases or permit any tenant thereunder to sublease or assign such Lease.

As consideration for SELLER's covenant not to enter into any new leases affecting the Property, CITY agrees to compensate SELLER to keep the Property vacant as described in this paragraph. Such compensation shall be payable only in the event any of the Leases expire or terminate prior to close of escrow; provided, however, that SELLER shall exercise good faith efforts to continue all such Leases in effect throughout term of this Agreement, although SELLER'S good faith efforts do not require SELLER to reduce rent for any tenant below the rates presently being charged (as such rates are noted immediately below). The amount of such compensation shall be calculated as follows and payable on a pro rata monthly basis from and after expiration/termination of the applicable Lease to and including the close of escrow: i) in the event of the expiration/termination of the Marble Lease - \$7,110.76/month, ii) in the event of the expiration/termination of the Medical Lease - \$4,100.00/month, and iii) in the event of the expiration/termination of the Cell Lease - \$4,658.30/year.

Any such compensation shall be payable by CITY to SELLER on a monthly basis, shall not be applicable to the Purchase Price, and shall be non-refundable except in the event this Agreement is terminated for reasons other than CITY's default hereunder, in which event SELLER shall return to CITY all such compensation paid within thirty (30) days of CITY's written request.

At CITY's option, in the event CITY pays such compensation, CITY shall be permitted to take possession of the applicable portion of the Property as lessee thereof on such terms and conditions as SELLER shall agree (which agreement



shall not be unreasonably withheld or delayed), which terms and conditions shall be the subject of an amendment to this Agreement.

- R. SELLER and CITY hereby warrant to each other that there are no brokers, finders or other persons entitled to a commission, finder's fee or other payment in connection with this Agreement.

**WITNESS THE EXECUTION HEREOF as of the dates hereinbelow written.**

"CITY"

CITY OF SAN JOSE, a municipal corporation of the State of California

Approved as to form:

\_\_\_\_\_  
Senior Deputy City Attorney

By: \_\_\_\_\_  
Dennis D. Hawkins, CMC  
City Clerk

Dated: \_\_\_\_\_, 2011

"SELLER"

JAMES P. AND JEAN M. MCCARTHY AS  
TRUSTEES OF THE JAMES AND JEAN  
MCCARTHY  
REVOCABLE LIVING TRUST DATED  
APRIL 4, 2000

By: James P. McCarthy, Trustee  
JAMES P. MCCARTHY,  
TRUSTEE

Dated: 3-11-, 2011

By: Jean M. McCarthy, Trustee  
JEAN M. MCCARTHY,  
TRUSTEE

Dated: 3-11, 2011

# ACKNOWLEDGEMENT

State of California

County of Santa Cruz

On 3/11/11 before me, Taylor Cayman Warren, Notary Public  
(insert name and title of officer)

Personally appeared James P. McCarthy and Jean M. McCarthy  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~  
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same  
in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

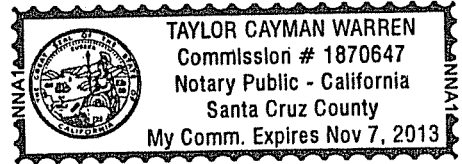
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
Paragraph is true and correct.

WITNESS my hand and official seal

Signature

Taylor Warren

(Seal)



**EXHIBIT "A"**  
**MAP AND/OR LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

**PARCEL ONE:**

LOTS 26, 28, 30 AND THE WESTERLY 4.91 FEET, FRONT AND REAR MEASUREMENTS OF LOT 32, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF NELSON TRACT NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 20, 1911 IN BOOK "N" OF MAPS, AT PAGE 25.

**PARCEL TWO:**

ALL OF LOT 32, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF NELSON TRACT NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 20, 1911 IN BOOK "N" OF MAPS, AT PAGE 25. EXCEPTING THEREFROM ALL THAT PORTION OF LOT 32 HEREINABOVE DESCRIBED THAT LIES EASTERLY OF THE EASTERLY OF THE CENTERLINE OF THE CHANNEL OF THE LOS GATOS CREEK, AS IT EXISTS AS OF MARCH 6, 1952 AND ALSO EXCEPTING THEREFROM THE WEST 4.1 FEET OF SAID LOT 32.

**PARCEL THREE:**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF LOT 22 AND ALL OF LOT 24 AS SHOWN ON THE "MAP OF NELSON TRACT NO. 1," FILED FOR RECORD ON FEBRUARY 20, 1911 IN BOOK N OF MAPS, AT PAGE 25, RECORDS OF SANTA CLARA COUNTY, AND ALSO BEING A PORTION OF PARCEL THREE AS DESCRIBED IN THE GRANT DEED RECORDED ON JUNE 30, 1983, IN BOOK H680, AT PAGES 248-250, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND BEING MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 24, SAID CORNER BEING ON THE SOUTHERLY LIEN OF WEST HOME STREET AS SHOWN ON SAID MAP; THENCE ALONG THE EASTERLY LINE OF SAID LOT 24, S 03° 00' 00" E 115.80 FEET TO THE SOUTHEAST CORNER OF SAID LOT 24; THENCE ALONG THE SOUTHERLY LINE OF SAID LOTS 24 AND 22, S 87° 00' 00" W 58.62 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF SAID LOT 22, N 00° 05' 58" E 115.97 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 22 AND ON SAID SOUTHERLY LINE OF WEST HOME STREET; THENCE ALONG SAID SOUTHERLY LINE OF WEST HOME STREET, N 87° 00' 00" E 52.35 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 6,425.16 SQUARE FEET (0.15 ACRES). THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE BEARING S 87° 00' 00" W OF THE SOUTHERLY BOUNDARY OF THE NELSON TRACT NO. 1 AS SHOWN UPON THE "MAP OF NELSON TRACT NO. 1," FILED FOR RECORD ON FEBRUARY 20, 1911 IN BOOK N OF MAPS, AT PAGE 25, RECORDS OF SANTA CLARA COUNTY.

**APN: 264-11-112**

**EXHIBIT B**

**TITLE COMPANY:**

North American Title Company  
4255 Hopyard Road, Suite 1  
Pleasanton, CA 94588

**DOCUMENT #:**

**FILE #:**

When Recorded mail to:

City of San José, OED/RE  
200 East Santa Clara St., 4th floor  
San José, CA 95113

SPACE ABOVE THIS LINE FOR RECORDER

**APN: 264-11-112**

**GRANT DEED**

**The Undersigned Grantor Declares: DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from transfer tax per Revenue and Taxation Code Section 11922 and exempt from recording fee per Government Code Section 6103.**

- ☐ computed on the consideration or full value of property conveyed, OR  
☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
☐ unincorporated area; ☒ City of San Jose, and  
☒ Signature of Declarant

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JAMES P. MCCARTHY AND JEAN M. MCCARTHY AS TRUSTEES OF THE JAMES AND JEAN MCCARTHY REVOCABLE LIVING TRUST DATED APRIL 4, 2000 "GRANTOR", does hereby GRANT to the CITY OF SAN JOSÉ, a municipal corporation of the State of California, "GRANTEE", all certain real property situate in the City of San José, County of Santa Clara, State of California, described in Exhibit "1" attached hereto and made a part hereof.**

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Signatures on next page

Dated: \_\_\_\_\_

"GRANTOR"  
JAMES P. AND JEAN M. MCCARTHY AS  
TRUSTEES OF THE JAMES AND JEAN  
MCCARTHY  
REVOCABLE LIVING TRUST DATED  
APRIL 4, 2000

By: \_\_\_\_\_  
JAMES P. McCARTHY,  
TRUSTEE

By: \_\_\_\_\_  
JEAN M. McCARTHY,  
TRUSTEE

## ACKNOWLEDGEMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
Paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGEMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
Paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (Seal)

### **Exhibit 1 to Grant Deed**

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

#### **PARCEL ONE:**

LOTS 26, 28, 30 AND THE WESTERLY 4.91 FEET, FRONT AND REAR MEASUREMENTS OF LOT 32, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF NELSON TRACT NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 20, 1911 IN BOOK "N" OF MAPS, AT PAGE 25.

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ALL OF LOT 32, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "MAP OF NELSON TRACT NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 20, 1911 IN BOOK "N" OF MAPS, AT PAGE 25. EXCEPTING THEREFROM ALL THAT PORTION OF LOT 32 HEREINABOVE DESCRIBED THAT LIES EASTERLY OF THE EASTERLY OF THE CENTERLINE OF THE CHANNEL OF THE LOS GATOS CREEK, AS IT EXISTS AS OF MARCH 6, 1952 AND ALSO EXCEPTING THEREFROM THE WEST 4.1 FEET OF SAID LOT 32.

#### **PARCEL THREE:**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF LOT 22 AND ALL OF LOT 24 AS SHOWN ON THE "MAP OF NELSON TRACT NO. 1," FILED FOR RECORD ON FEBRUARY 20, 1911 IN BOOK N OF MAPS, AT PAGE 25, RECORDS OF SANTA CLARA COUNTY, AND ALSO BEING A PORTION OF PARCEL THREE AS DESCRIBED IN THE GRANT DEED RECORDED ON JUNE 30, 1983, IN BOOK H680, AT PAGES 248-250, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND BEING MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 24, SAID CORNER BEING ON THE SOUTHERLY LIEN OF WEST HOME STREET AS SHOWN ON SAID MAP; THENCE ALONG THE EASTERLY LINE OF SAID LOT 24, S 03° 00' 00" E 115.80 FEET TO THE SOUTHEAST CORNER OF SAID LOT 24; THENCE ALONG THE SOUTHERLY LINE OF SAID LOTS 24 AND 22, S 87° 00' 00" W 58.62 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF SAID LOT 22, N 00° 05' 58" E 115.97 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 22 AND ON SAID SOUTHERLY LINE OF WEST HOME STREET; THENCE ALONG SAID SOUTHERLY LINE OF WEST HOME STREET, N 87° 00' 00" E 52.35 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 6,425.16 SQUARE FEET (0.15 ACRES). THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE BEARING S 87° 00' 00" W OF THE SOUTHERLY BOUNDARY OF THE NELSON TRACT NO. 1 AS SHOWN UPON THE "MAP OF NELSON TRACT NO. 1," FILED FOR RECORD ON FEBRUARY 20, 1911 IN BOOK N OF MAPS, AT PAGE 25, RECORDS OF SANTA CLARA COUNTY.

**APN: 264-11-112**



Deed Acceptance  
APN: 264-11-112

## DEED ACCEPTANCE

This is to certify that the interest in real property conveyed by Grant Deed, dated \_\_\_\_\_, from James P. McCarthy and Jean M. McCarthy as Trustees of the James and Jean McCarthy Revocable Living Trust dated April 4, 2000, to the City of San Jose, a municipal corporation of the State of California, is hereby accepted by the undersigned officer of said City on behalf of the City Council of the City of San Jose, pursuant to authority conferred by the City Council of the City of San Jose on \_\_\_\_\_, 2011. The Grantee consents to recordation thereof by its duly authorized officer.

CITY OF SAN JOSE, A Municipal Corporation of the State of  
California

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "C"**  
**PRELIMINARY TITLE REPORT**

**Amendment No. 1**



4255 Hopyard Road, Suite 1  
Pleasanton, CA 94588  
(925)399-3000  
(925)251-0104

Monica Kavanaugh  
City of San Jose, Real Estate Division  
200 East Santa Clara St, 5th Floor  
San Jose, CA 95113  
Phone: (408)535-8452  
Fax: (408)292-6269

Customer Reference: West Home Street/264-11-112

**DIRECT ALL INQUIRIES TO:**

Title Officer: Chan Amarsingh  
Phone: 925-399-3000  
Fax No.: 925-251-0104  
E-Mail: camarsingh@nat.com

**Property:** 806 West Home Street  
San Jose, CA  
**Owner:** James P. McCarthy and Jean M. McCarthy as Trustees

**PRELIMINARY REPORT**

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE,

**North American Title Insurance Company**

Hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and limitations on covered risks of said Policy or Policies are set forth in Exhibit A attached. The Policy to be issued may contain an Arbitration Clause. When the amount of insurance is less than that set forth in the Arbitration Clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the Parties. Limitations on covered risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a deductible amount and a maximum dollar limit of liability for certain coverages are also set forth in Exhibit A. Copies of the Policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of November 29, 2010 at 7:30 A.M.

Chan Amarsingh, Title Officer

The form of Policy of title insurance contemplated by this report is:

Preliminary Report Only

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

James P. McCarthy and Jean M. McCarthy as Trustees, or successor Trustee of the James and Jean McCarthy Revocable Living Trust dated April 4, 2000

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee.

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes for the fiscal year **2010-2011**,

First installment:	<b>\$4,474.22, DUE</b>
Penalty:	<b>\$447.42</b>
Second installment:	<b>\$4,474.22, OPEN</b>
Penalty:	<b>\$457.42</b>
Code area:	<b>17-193</b>
A. P. No.:	<b>264-11-112</b>
Exemption:	<b>\$0.00</b>
Land:	<b>\$93,166.00</b>
Improvement:	<b>\$503,349.00</b>
Total Amount:	<b>\$8,948.44</b>
  2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
  3. Any adverse claim based upon the assertion that:
    - A. Said land or any part thereof is now or at any time has been below the highest of the high watermarks of the Los Gatos Creek, in the event the boundary of said river/creek has been artificially raised or is now or at any time has been below the high watermark, if said river/creek is in its natural size.
    - B. Some portion of said land has been created by artificial means or has accreted to such portion so created.
    - C. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Los Gatos Creek or has been formed by accretion to any such portion.
- Affects Parcel Two.

4. Rights and easements for Navigation and Fishery which may exist over that portion of said land lying beneath the waters of Los Gatos Creek.

Affects Parcel Two.

5. An easement for public utility easement and access to adjoining lands and incidental purposes in the document recorded February 9, 1982 as Instrument No. 7277746 in Book G596, Page 587 of Official Records.

The location of the easement cannot be determined from record information.

Affects Parcel Two.

6. Covenants, conditions, restrictions and easements in the document recorded February 9, 1982 as Instrument No. 7277746 in Book G596, Page 587 of Official Records, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, sexual orientation, marital status, ancestry, disability, handicap, familial status, national origin or source of income (as defined in California Government Code §12955(p)), to the extent such covenants, conditions or restrictions violate 42 U.S.C. §3604(c) or California Government Code §12955. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Affects Parcel Two.

7. The terms and provisions contained in the document entitled Consent Agreement, executed by and between Pacific Gas and Electric Company, a California Corporation and James P. McCarthy and Jean M. McCarthy, husband and wife, recorded October 11, 1990 as Instrument No. 10681995 in Book L505, Page 0230 of Official Records.

Affects Parcel Two.

8. Terms and conditions of that certain Site Development Permit, File No. H 90-08-091, as said permit is disclosed by that certain Notice of Granting of a Site Development Permit recorded April 23, 1991 as Instrument No. 10875349 in Book L685, Page 0812.

Affects Parcel Two.

9. An easement for water management and/or storm water drainage and incidental purposes, recorded October 18, 1991 as Instrument No. 11098649 in Book L896, Page 1474 of Official Records.

In Favor of: Santa Clara Valley Water District

Affects: Portion as described therein

Affects Parcel Two.

10. An easement for construction, operation and maintenance of a paved, public-use, non-illuminated asphalt trail for pedestrians and bicyclists with portions of the area conveyed by this easement to include a pile-supported platform, concrete tilt-up wall, chain link fence and a split rail fence. The trail will be open for general public use during daylight hours and occasional use by emergency and maintenance vehicles belonging to the City of San Jose, The Santa Clara Valley Water District and other public utilities and incidental purposes, recorded June 28, 2006 as Instrument No. 18993105 of Official Records.

In Favor of: City of San Jose, a municipal corporation of the State of California

Affects: As described therein

Terms and provisions contained in the above document.

Affects Parcel Two.

11. An easement for temporary construction easement and incidental purposes, recorded June 28, 2006 as Instrument No. 18993106 of Official Records.

In Favor of: City of San Jose

Affects: As described therein

Terms and provisions contained in the above document.

Affects Parcel Two.

12. The effect, if any of the Statement of Proceedings by the Redevelopment Agency of San Jose recorded August 1, 2002, Instrument No. 16397034, Santa Clara County.

13. With respect to the trust referred to in the vesting:

a. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to the Company.

b. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.

c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

### LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

**PARCEL ONE:**

LOTS 26, 28, 30 AND THE WESTERLY 4.91 FEET, FRONT AND REAR MEASUREMENTS OF LOT 32, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF NELSON TRACT NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON FEBRUARY 20, 1911 IN BOOK "N" OF MAPS, AT PAGE 25.

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**PARCEL THREE:**

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BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 24, SAID CORNER BEING ON THE SOUTHERLY LIE OF WEST HOME STREET AS SHOWN ON SAID MAP; THENCE ALONG THE EASTERLY LINE OF SAID LOT 24, S 03° 00' 00" E 115.80 FEET TO THE SOUTHEAST CORNER OF SAID LOT 24; THENCE ALONG THE SOUTHERLY LINE OF SAID LOTS 24 AND 22, S 87° 00' 00" W 58.62 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF SAID LOT 22, N 00° 05' 58" E 115.97 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 22 AND ON SAID SOUTHERLY LINE OF WEST HOME STREET; THENCE ALONG SAID SOUTHERLY LINE OF WEST HOME STREET, N 87° 00' 00" E 52.35 FEET TO THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 6,425.16 SQUARE FEET (0.15 ACRES).

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE BEARING S 87° 00' 00" W OF THE SOUTHERLY BOUNDARY OF THE NELSON TRACT NO. 1 AS SHOWN UPON THE "MAP OF NELSON TRACT NO. 1," FILED FOR RECORD ON FEBRUARY 20, 1911 IN BOOK N OF MAPS, AT PAGE 25, RECORDS OF SANTA CLARA COUNTY.

APN: 264-11-112

### INFORMATIONAL NOTES

1. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:  
  
None
2. Basic rate applies.
3. General and special taxes for the fiscal year **2007-2008**,  
First installment: **\$4,176.55, PAID**  
Second installment: **\$4,176.55, PAID**  
Code area: **17-193**  
A. P. No.: **264-11-105**  
Exemption: **\$0.00**  
Land: **\$80,615.00**  
Improvement: **\$484,953.00**
4. In addition to the county transfer tax of \$0.55 per \$500.00 the land herein also subject to a City of San Jose conveyance tax in the amount of \$1.65 per \$500 valuation. This city tax is figured on the full value of the land with no credits for existing loans or bonds.
5. The map attached, if any, may or may not be a survey of the land depicted hereon. North American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title Insurance policy, if any, to which this map is attached.
6. North American Title Company, Inc.'s charges for recording the transaction documents include charges for services performed by North American Title Company, Inc., in addition to an estimate of payments to be made to governmental agencies.

## EXHIBIT "D"

### DEFINITION OF HAZARDOUS MATERIALS

**"Hazardous Materials"** shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

**"Environmental Laws"** shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.



## EXHIBIT "E"

TITLE COMPANY:  
North American Title Co.  
4255 Hopyard Road, Suite 1  
Pleasanton, CA 94588

DOCUMENT #:  
FILE #:  
When Recorded mail to:  
City of San José, OED/RE  
200 E. Santa Clara St., 4th fl  
San José, CA 95113

---

SPACE ABOVE THIS LINE FOR RECORDER

**APN: 264-11-112**

### **MEMORANDUM OF PURCHASE AGREEMENT**

THIS MEMORANDUM OF PURCHASE AGREEMENT (this "Memorandum") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between CITY OF SAN JOSE, a Municipal corporation ("City"), and JAMES P. AND JEAN M. MCCARTHY AS TRUSTEES OF THE JAMES AND JEAN MCCARTHY REVOCABLE LIVING TRUST DATED APRIL 4, 2000 ("Seller").

Seller and City have entered into an Agreement for Purchase of Real Property (the "Agreement") dated as of the date of this Memorandum, pursuant to the terms of which Agreement Seller agrees to sell and City agrees to purchase the property described in Exhibit "1" attached hereto for the sum of \$1,675,000.00.

The terms of the Agreement are by reference incorporated herein as if set out in full in this Memorandum. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall prevail.

IN WITNESS WHEREOF, Seller and City have executed this Memorandum as of the day and year first above written.

[signatures on next page]

"CITY"

Approved as to form:

CITY OF SAN JOSE, a municipal  
corporation of the State of California

\_\_\_\_\_  
Senior Deputy City Attorney

By: \_\_\_\_\_  
Dennis D. Hawkins, CMC  
City Clerk

"SELLER"

JAMES P. AND JEAN M. MCCARTHY AS  
TRUSTEES OF THE JAMES AND JEAN  
MCCARTHY  
REVOCABLE LIVING TRUST DATED  
APRIL 4, 2000

By: \_\_\_\_\_  
JAMES P. McCARTHY,  
TRUSTEE

By: \_\_\_\_\_  
JEAN M. McCARTHY,  
TRUSTEE

## ACKNOWLEDGEMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
Paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGEMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
Paragraph is true and correct.

WITNESS my hand and official seal

Signature \_\_\_\_\_ (Seal)

**EXHIBIT 1 TO MEMORANDUM OF AGREEMENT**  
**LEGAL DESCRIPTION**

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

**PARCEL ONE:**

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**APN: 264-11-112**

**EXHIBIT "F"**  
**FORM OF TENANT ESTOPPEL CERTIFICATE**

**TENANT ESTOPPEL CERTIFICATE**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Leased Property Located at \_\_\_\_\_ Street, San Jose

The undersigned hereby certifies to the City of San Jose ("City") as follows:

1. The undersigned is the "Tenant" under the lease dated \_\_\_\_\_, ("Lease") whereby Tenant leases the \_\_\_\_\_ located at \_\_\_\_\_ Street, San Jose ("Premises"). A true and correct copy of the Lease (including all addendums, riders, amendments, modifications and supplements thereto) is attached as Exhibit 1.
2. The Lease constitutes the entire agreement between landlord under the Lease ("Landlord") and Tenant with respect to the Premises and the Lease has not been modified, changed, altered or amended in any respect except as indicated above.
3. The term of the Lease commenced on \_\_\_\_\_, and will expire on \_\_\_\_\_; or, if the agreed term has expired, Tenant's term continues on a month to month basis terminable upon thirty (30) days notice. Tenant has no right to renew or extend the term of the Lease except as specifically described in the Lease and addenda thereto.
4. Tenant has accepted possession of the Premises and is the actual occupant in possession and has not sublet or assigned, or pledged or otherwise encumbered, Tenant's leasehold interest. All improvements to be constructed on the Premises by Landlord have been completed and accepted by Tenant and any tenant construction allowances have been paid in full.
5. Tenant is currently obligated to pay rent in monthly installments of \$\_\_\_\_\_ per month. No rent has been paid by Tenant in advance under the Lease except for the rent which became due for the current month.
6. Landlord is holding a security deposit of \$\_\_\_\_\_.
7. Tenant has made no agreement with Landlord or any agent, representative or employee of Landlord concerning free rent, partial rent, rebate or rental payments or any other type of rental or other concession except as follows:

8. Tenant has no set-offs against Landlord, nor does Tenant assert any claim against Landlord for any failure of performance of any of the terms of the Lease, and there are no defaults by Landlord.

9. Tenant is not in default under the Lease, has used the Premises in compliance with all applicable laws, and is current in the payment of any taxes, utilities, common area maintenance expenses, or other charges required to be paid by Tenant. The amount of such charges paid by Tenant in the current year, by category, are as follows:

\_\_\_\_\_. Tenant is owed no refund of such charges made for prior years. Tenant acknowledges that, upon acquisition of the Premises by City, the Premises will no longer be subject to real property taxes; however, that Tenant's possessory interest will be subject to property taxation, and that Tenant's obligations under the Lease with respect to real property taxes shall extend and apply to such possessory interest taxes

10. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or any state thereof, or any other action brought under said bankruptcy laws with respect to Tenant.

11. All insurance required of Tenant by the Lease has been provided by Tenant and all premiums paid. Tenant acknowledges that the City is self insured for liability claims.

This Certificate is made to the City in connection with its acquisition of the Premises from the Landlord. This Certificate may be relied upon by the City and the representations made herein by Tenant shall be binding upon Tenant. Tenant agrees that it will, upon receipt of written notice from City, commence to pay all rents to the City.

The City may consider this Certificate and the information contained herein accurate as of any date that is within forty-five (45) days after the date set forth below, except to the extent Tenant notifies City in writing at the address set forth above of changes to such information.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

"Tenant"

\_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_